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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,642	12/04/2003	Andreas Rinke	P24369	6203
7055	7590	06/29/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C.			SHARMA, RASHMI K	
1950 ROLAND CLARKE PLACE			ART UNIT	
RESTON, VA 20191			PAPER NUMBER	
			3651	

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/726,642	<b>Applicant(s)</b> RINKE ET AL.	
	<b>Examiner</b> Rashmi K. Sharma	<b>Art Unit</b> 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 is/are allowed.
- 6) ☒ Claim(s) 1-6, 9, 10, 12, 13, 15-21 and 23-25 is/are rejected.
- 7) ☒ Claim(s) 7, 8 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/14/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the end positions of the predetermined longitudinal axial displacement in claim 1, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 1 and 6 are objected to because of the following informalities: it appears as though the claims are replete with failing to provide proper antecedent basis after a structural element has already been introduced. All informalities found are as follows: claim 1 line 8 should recite "...in a longitudinal axial direction...", and claim 6 line 2 should recite "...in the longitudinal axial *direction*...".

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 and 12, 13, 15-17 and 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the longitudinal axial direction" in the last two lines.

Claims 20 and 21 recite the limitation "the position of" in line 2.

Claim 22 recites the limitation "the adjusted predetermined range" in line 8, "the position of" in lines 10-11, "the at least one wobble plate" in line 11 and "the changing of the position" in lines 11-12.

Claim 20 recites the limitation "the position of" in line 2.

There is insufficient antecedent basis for these limitations in the claims.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between

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the elements. See MPEP § 2172.01. The omitted elements are: a conveyor drum. A conveyor drum or any other equivalence thereof must be claimed in order for the invention to function and operate.

Claim 24 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: exactly what structure is the adjustment device being coupled to?

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6, 9, 10, 12, 13, 15-21 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Crosara (EP 1138215).

Crosara discloses a tobacco processing conveyor drum (spreading/sliding) for receiving axially aligned articles that are conveyed in a cross-axial direction toward said conveyor drum, said conveyor drum comprising a shifting device (see Figures 1-3) positioned to act on each fed row of articles for changing a longitudinal axial spacing of the articles by a predetermined longitudinal axial displacement, an adjustment device (16) assigned to the at least one wobble plate (10) structured and arranged to adjust at

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least one of a magnitude of the predetermined longitudinal axial displacement, seats (13) structured and arranged to receive the articles and to move in a longitudinal axial direction, wherein the shifting device includes at least one wobble plate (10) displaceable in the longitudinal axial direction parallel to the articles, a drive (18) for the at least one wobble plate (10), wherein the seats comprise at least two seats (13) arranged for articles on a movable carriage (8, 15 or 17), wherein said at least two seats (13) or said carriage are connected to the at least one wobble plate.

Crosara also discloses a process of changing a longitudinal axial spacing between axially aligned articles moving in a cross-axial direction comprising a conveyor drum, placing the articles on a plurality of aligned positionably adjustable seats (13), a shifting device to change the spacing between the positionably adjustable seats within a predetermined range, an adjustment device (16) coupled to the shifting device to adjust a magnitude of the predetermined range whereby a magnitude of the spacing between the positionably adjustable seats is changed to the adjusted magnitude of the predetermined range, said shifting device (see Figures 1-3) comprises at least one wobble plate (10) to which said plurality of aligned positionably adjustable seats (13) are coupled, wherein the adjustment device (16) is coupled to displace the at least one wobble plate (10) and wherein the adjustment device is arranged to displace the at least one wobble plate (10) at least one of linearly and angularly.

***Allowable Subject Matter***

Claim 14 has been allowed.

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Independent claim 14 recites the structural limitation of a conveyor drum comprising said at least two seats or said carriage are connected to said wobble plate by a ball joint, in combination with the rest of the recited structure, clearly defines over the prior art.

Claim 22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter:

Independent claim 22 recites the structural limitation of a conveyor drum comprising the changing of the position of at least one wobble plate comprises adjusting an angular position of the at least one wobble plate with the conveyor drum, in combination with the rest of the recited structure, clearly defines over the prior art.

Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Dependent claim 7 recites the structural limitations of wherein said wobble plate is angularly displaceable such that an angle between a rotational axis of said wobble plate and a rotational axis of said conveyor drum is changeable, in combination with the rest of the recited structure, clearly define over the prior art.

***Response to Arguments***

Applicant's arguments filed 4/13/06 have been fully considered but they are not persuasive.

Regarding the claim objections and the 112 second paragraph rejections, the Examiner once again suggests the Applicant to more precisely review the claim language, as it still has a multitude of formal errors.

In response to applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the features upon which applicant relies (i.e., available lift or the longitudinal axial displacement for the articles being fixed or not fixed, the predefined track cannot be changed) are not recited in the rejected claim(s). The current claim amendment fails to suggest any structure enabling Applicant's predefined track to be not fixed or changeable. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that Crosara's "predefined track" may not be changed, however this does not differentiate over whether or not Crosara meets Applicants claim limitations. Crosara as rejected above, does indeed disclose each and every claim limitation defined within the claim language, including an adjustment device, thereby adjusting a predetermined longitudinal axial displacement, a longitudinal sliding movement or a longitudinal displacement of the seats. Crosara's seats (13) move longitudinally linearly within slide (10) along carriages (8, 15 or 17). Ranges within a fixed path can and are still adjustable within the Crosara reference, in the longitudinal



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axial direction. Applicant argues that the Crosara reference shows a fixed path, however Applicant's structural arrangement also shows a fixed a fixed path. Applicant fails to argue and/or disclose the exact structural differences between the Crosara reference and Applicant's claimed. Therefore the arrangement of Crosara's structural limitations do indeed meet Applicants claim limitations as currently disclosed, as rejected above.

The Examiner's broad interpretation of Crosara's slides (10) to be equivalent to Applicant's "wobble plates" is well within the scope of Applicant's claim limitations. Since Applicant has failed to assign any further structure and/or any further orientation of Applicant's wobble plates, Crosara's slides (10) do indeed meet this claim limitation.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

### ***Conclusion***

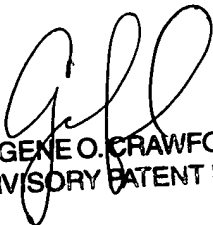
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rashmi K. Sharma whose telephone number is 571-272-6918. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on 571-272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER